

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA**

IN RE:)	CASE NO. 23-80623
)	
DANNIE L. BENNETT, JR.)	Honorable Brian S. Kruse
MARIA J. BENNETT,)	
)	CHAPTER 13
Debtors.)	
_____)	

**MOTION FOR RELIEF
FROM AUTOMATIC STAY**

COMES NOW Creditors HEA Corporation, Jordan and Renee Mellican (collectively, “Mellicans”), pursuant to 11 U.S.C. § 362(d), Bankruptcy Rule 4001(a) and Neb. R. Bankr. P. 4001-1, hereby move this Court for an Order granting the Plaintiffs relief from the provisions of 11 U.S.C. § 362 to allow the Plaintiffs to register the judgment granted by this Court on October 1, 2024 in Sarpy County, Nebraska. Further relief is requested as it relates to co-defendants in the stayed litigation in the District Court of Douglas County, Nebraska. To the extent, if any, the automatic stay extends to the co-defendant entities of Super Clean Jobsite LLC, SCJS Franchising Inc., and Dannie L. Bennett, Sr. (collectively, “Non-Debtor Co-Defendants”) relief is requested to pursue the stayed litigation as it pertains to them.

The Plaintiffs state the following in support of this Motion:

- Jurisdiction and Venue

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334.

This matter is a core proceeding pursuant to 28 U.S.C. §157(b).

2. The statutory basis for the relief requested herein is 11 U.S.C. 362(d) of the Bankruptcy Code. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).
3. The above named debtors filed this proceeding for relief under Chapter 13, Title 11 U.S.C., on or about August 11, 2023.

- **Factual Background**

4. This Court awarded a judgment in the amount of \$764,000.00 for the Mellicans on October 1, 2024, finding that Bennett fraudulently misrepresented the financial condition of Super Clean. In this judgment, the Court classified the \$764,000.00 as exempt from discharge, pursuant to 11 U.S.C. § 523(a)(2)(B).
5. On October 8, 2024 the Mellicans became aware that the Debtor's property located at 8613 Citta Circle, Bellevue, NE 68147 (the "Property:"), located in Sarpy County and listed on Schedule A/B at ECF No. 16, was listed for sale on the Multiple Listing Service ("MLS") at MLS #22417576.
6. As of the date of this filing, the Property was listed as "Pending" a sale.
7. Upon information and belief, the closing date for the Property is October 25, 2024.
8. The Property is property of the estate under 11 USC §§ 541 and/or 1306.
9. No Motion has been filed with the Court seeking approval to sell the Property, under 11 U.S.C. § 363 nor has a Motion been filed with the Court to approve any purchase and sale agreement pursuant to 11 U.S.C. § 363.

10. At the time Debtors' Chapter 13 petition was filed, litigation was pending in the District Court of Douglas County, Nebraska whereas the Creditors had claims pending against Debtor Dannie L. Bennett, Jr. and the Non-Debtor Co-Defendants at Case No. CI 19-8909.

11. The case was stayed as to all parties when Debtor Dan Bennett Jr. filed a Suggestion in Bankruptcy.

- **Requested Relief**

12. Section 362(d) of the Bankruptcy Code provides the circumstances under which a creditor may obtain relief from the automatic stay. 11 U.S.C. § 362(d) states:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

13. In this case, relief may be granted under 11 U.S.C. §362(d)(1), as set forth below.

14. Cause exists in this case under § 362(d)(1) because as a judgment creditor under Nebraska state law, Neb. Rev. Stat. § 1305, "A transcript of any judgment or decree rendered in a circuit or district court of the United States within the State of Nebraska may be filed in the office of the clerk of the district court in any county in this state."

15. Upon such filing, the transcript shall be a lien on the property of the debtor.

Id.

16. However, sale of the Property without the prior approval and supervision of the Court may deprive the Mellican's of its state law lien and/or the proceeds of the sale that the Mellicans, as judgment creditors, would be entitled to.

17. Creditors also request relief from the automatic stay as it applies to the Non-Debtor Co-Defendants in the state court litigation pending in the District Court of Douglas County, Nebraska at Case No. CI 19-8909.

- **Request for Waiver of Stay Order Under Fed. R. Bankr. P. 4001(a)(3)**

18. Accordingly, the Plaintiffs request a waiver of the fourteen-day stay of effectiveness imposed by Fed. R. Bankr. P. 4001(a)(3), so that the relief requested herein may take effect immediately upon entry of an order approving this motion. Such a waiver is necessary in order to file a transcript of the October 1, 2024, judgment this Court awarded to the Plaintiffs prior to closing on any purchase Agreement pertaining to the Property.

WHEREFORE, Creditors HEA Corporation, Jordan and Renee Mellican respectfully request the entry of an order, pursuant to 11 U.S.C. § 362, (1) granting the Creditors relief from the automatic stay in order to file the October 1, 2024, judgment, (2) granting Creditors relief from the automatic stay as it applies to the Non-Debtor Co-Defendants in the state court litigation pending in the District Court of Douglas County, Nebraska at Case No. CI 19-8909; (3) granting a waiver of the

fourteen-day stay under the Fed. R. Bankr. P. 4001(a)(3), and (4) for such other and further relief as this Court should deem appropriate.

Dated this 9th day of October, 2024.

HEA CORPORATION, JORDAN
MELLICAN, and RENEE MELLICAN,
Plaintiffs

By: /s/ Jay D. Koehn
Jay D. Koehn #25784
Donald Rison #27225
McGrath North Mullin & Kratz, PC,
LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, NE 68102
Phone: (402) 341-3070
Fax: (402) 341-0216
jkoehn@mcgrathnorth.com
drison@mcgrathnorth.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion for Relief from Automatic Stay was served upon debtors Dannie L. Bennett, Jr. and Maria J. Bennett, 13411 Lochmoor Circle, Bellevue, NE 68123, by regular United States mail, postage pre-paid, upon debtors' attorney of record Joel G. Lonowski, upon the trustee, Erin McCartney and upon Jerry L. Jensen, Acting United States Trustee, via electronic notification this October 9, 2024.

/s/ Jay D. Koehn